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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,088	12/20/2001	Vincent Vaccarelli	LEAP:114_US_	9688
24041	7590	09/15/2004	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			FINEMAN, LEE A	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 09/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,088

Applicant(s)

VACCARELLI ET AL.

Examiner

Lee Fineman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) *
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/1/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This Office Action is in response to an amendment filed 30 June 2004 in which claims 1-3 and 5-6 were amended and claims 10-13 were added. Claims 1-13 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over SO-1350 Brochure and SO-5000 Microscope Information, www.scanoptics.com.au [online] (henceforth Scan Optics) in view of Leishman, U.S. Patent No. 5,036,852.

Scan Optics discloses a microscope stand (figure, page 1 of SO-1350 brochure) of a type having an electrically powered element and a standard power inlet connected to said element (see power cord in figure), said standard power inlet rated to provide a first voltage; a standard auxiliary power outlet connected to said standard power inlet, providing a second voltage, and operatively arranged for receiving a power cord of an electrically powered auxiliary device associated with said microscope stand (see page 2 of brochure, under camera heading, power supply subhead, "power outlet jack provided on SO-5000 Ophthalmic Microscope") wherein said standard power inlet of said microscope stand and said standard auxiliary power outlet are formed according to a common standard chosen from a plurality of standards in use throughout the world (figure); wherein said electrically powered element is an illumination source (see SO-

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5000 Microscope Information, the element is an illumination source, main coaxial light); and wherein said power inlet and said power outlet operatively arranged on an outer surface of said microscope stand (figure). Scan Optics discloses the claimed invention except for said standard auxiliary power outlet providing a second voltage identical to said first voltage, explicitly stating that the power inlet, power cord and power outlet are adapted for accepting a standard International Electrotechnical Commission (IEC) Connector and wherein said power inlet comprises a male plug portion for accepting a first female outlet of said power cord and said auxiliary power outlet comprises a second female outlet for accepting a male plug portion of a power cord of an auxiliary device therein. Standard auxiliary female power outlets able to accept a standard IEC connector and having a second voltage matching the first voltage of a standard male power inlet also able to accept a standard IEC connector are well known to provide a receptacle for additional standard/common electrical equipment. For example, the device of Leishman (fig. 3) includes a standard IEC power inlet (90, fig. 2, column 4, lines 57-59) of a first voltage and a standard IEC auxiliary power outlet (74, fig. 2) of a second voltage, which is identical to the first voltage (column 5, lines 53-59, it is replacing the wall outlet so the auxiliary outlet has the same voltage as the inlet) to provide a receptacle for additional standard/common electrical equipment and wherein said power inlet comprises a male plug portion (column 4, line 57) for accepting a first female outlet of said power cord (column 4, lines 58-59) and said auxiliary power outlet comprises a second female outlet for accepting a male plug portion of a power cord of an auxiliary device therein (column 5, lines 53-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the auxiliary power outlet of Scan Optics be of identical voltage to that of said power inlet, make them both

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IEC compliant and a female outlet and a male plug respectively, as suggested by Leishman, to be able to power additional standard/common electrical equipment.

Further, Scan Optics discloses the claimed invention except for the microscope stand being of a desktop type. Official notice is taken that desktop microscope stands are well known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the stand of Scan Optics into a desktop type to make the microscope system more compact and able to be used in smaller spaces. It is noted as directed by the MPEP 2144.03 that if the applicant does not seasonably traverse the well-known statement during examination, then the object of the well-known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). As such, the above official notice statement of the examiner are now held to be admitted prior art.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scan Optics in view of Leishman, as applied to claim 1 above, and further in view of Austin, U.S. Patent No. 5,389,740.

Scan Optics in view of Leishman, as applied to claim 1 above disclose the claimed invention except for further comprising a cover installed to prevent access to said auxiliary power outlet, wherein said cover is adapted to be removable by a service technician but not by an end user. Austin teaches a cover (120, figs. 7 and 8) installed to prevent access to a power outlet (column 7, lines 11-46), wherein said cover is adapted to be removable by a service technician but not by an end user (if the service technician has the special tool, column 7, lines 38-41). It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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add the cover of Austin to the auxiliary power outlet of Scan Optics in view of Leishman to prevent electrical shock due to tampering and preclude unwanted connection or disconnection of critical electrical equipment (Austin, column 5, lines 19-25).

4. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scan Optics in view of in view of Leishman as applied to claim 1 above, and further in view of Maggelet et al., U.S. Patent No. 5,099,391.

Scan Optics in view of in view of Leishman as applied to claim 1 above disclose a desktop microscope stand with an electrically powered element and a power inlet and an auxiliary power outlet adapted for accepting standard International Electrotechnical Commission (IEC) Connector (see section #2 above). Scan Optics in view of in view of Leishman as applied to claim 1 above disclose the claimed invention but are silent to further comprising a printed circuit board; said power inlet being connected to fuse protected dual switches such that said auxiliary power outlet and said electrically powered element are overload protected; and wherein said printed circuit board is connected to said fuse protected dual switches, said standard auxiliary power outlet and said electrically powered element. Maggelet et al. teaches in fig. 1 a printed circuit board (12) connected to a power inlet (75), a standard auxiliary power outlet (83) and an electrically powered element (LED, see column 1, lines 44-45); said power inlet being connected to fuse protected dual switches such that said auxiliary power outlet and said electrically powered element are overload protected (column 4, lines 6-9); and wherein said printed circuit board is connected to said fuse protected dual switches (fig. 1). It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to use the circuit board of Maggelet et al. in the system of Scan Optics in view of in view of Leishman to provide interconnected control functions to the system (Maggelet, column 1, lines 23-30).

Response to Arguments

5. Applicant's arguments filed 30 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Leishman demonstrates that it is very well known to one of ordinary skill to have standard power inlets and auxiliary power outlets with identical voltages and connector types to provide a receptacle for additional standard/common electrical equipment (column 5, lines 53-59).

In further response to applicant's argument that Leishman is nonanalogous art, i.e., not a microscope, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Leishman is reasonably pertinent to the particular problem with which the applicant was

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concerned, i.e., providing power to additional equipment without additional outlets/extension cords being necessary (see column 5, lines 53-59).

In response to applicant's arguments against the references individually, i.e., Scan optics teaches away from the invention because it teaches different elements, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues that standup type microscopes are different from desktop type microscopes and therefore one of ordinary skill in the art "would not even consider making a standup microscope into a desktop type stand." The examiner respectfully disagrees. Microscope stands hold structure, e.g., a specific set of lenses. It is very well known to use a specific size stand to be able to use the held structure in a specific situation, e.g., in surgery over an operating table or in a laboratory on a desk. As applicant acknowledges that desktop type microscopes stands are well known, it would have been obvious to be able to use that desktop size stand to hold the Scan Optics' microscope system so it could to be used in smaller spaces. Additionally, the examiner would like to point out that there is no claimed structure directed to a desktop microscope stand that distinguishes it over the prior art.

Lastly, in response to applicant's argument that Austin is nonanalogous art, i.e., not a protective cover on a microscope outlet, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed.

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Cir. 1992). In this case, Austin is reasonably pertinent to the particular problem with which the applicant was concerned, i.e., providing a protective cover for an outlet (see column 7, lines 11-46).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Fineman whose telephone number is (571) 272-2313. The examiner can normally be reached on Monday - Friday 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LAF

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September 9, 2004


MARK A. ROBINSON
PRIMARY EXAMINER